



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2021-0768]**

**RIN 1625-AA08**

### **Special Local Regulation; San Diego Bay, San Diego, CA**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation (SLR) for the San Diego Fleet Week Veterans Day Boat Parade marine event that will be held on the waters of San Diego Bay, California. This action is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway during the event on November 11, 2021. This SLR temporarily encompasses all navigable waters, from surface to bottom, on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the Federal navigable channel and ending off of Coronado Island.

**DATES:** This rule is effective from 11:30 a.m. to 2:30 p.m. on November 11, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0768 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S.

Coast Guard Sector San Diego, CA; telephone (619) 278-7656, e-mail

MarineEventsSD@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was given short notice from the event sponsor regarding the event, and must establish this special local regulation by November 11, 2021. The event is expected to draw a high concentration of vessels to the San Diego Bay area along the proposed parade route. Traditionally, the San Diego Bay area serves as a major thoroughfare for commercial traffic, naval operations, ferry routes, and a number of other recreational uses. The Coast Guard is establishing this SLR to minimize impacts on this congested waterway. This regulation is necessary to ensure the safety of individuals, property, and the marine environment on the navigable waters of San Diego Bay during this event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because

immediate action is needed to ensure the safety of life on the navigable waters of San Diego Bay during the marine event on November 11, 2021.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1236). The Captain of the Port (COTP) Sector San Diego has determined that potential hazards associated with the parade will be a safety concern for anyone within the vicinity of the parade route. This rule is needed to protect personnel, vessels, spectators, and the marine environment in the navigable waters of the San Diego Bay in the vicinity of the marine event during the enforcement period of this rule.

### **IV. Discussion of the Rule**

This rule establishes an SLR from 11:30 a.m. until 2:30 p.m. on November 11, 2021. The SLR will cover all navigable waters on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the Federal navigable channel and ending off of Coronado Island. The duration of the SLR is intended to protect personnel, vessels, spectators, and the marine environment in these navigable waters before, during, and after the event is scheduled to occur. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the SLR. This action will affect only the northern portion of the San Diego Main Ship Channel for three hours. Vessels will still be able to transit the area outside of the regulated area and request permission to enter, as needed. The Coast Guard will publish a Local Notice to Mariners and will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 that details the vessel restrictions of the regulated area.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the SLR may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a SLR lasting less than four hours that will monitor entry to the SLR area for the duration of the enforcement period to cover before, during and after the parade has concluded. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T11-0768 to read as follows:

**§ 100.T11-0768 San Diego Fleet Week Veterans Day Boat Parade, San Diego Bay, California.**

(a) *Regulated area.* The regulations in this section apply to the following area:

(1) Parade area: All navigable waters, from surface to bottom, on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the Federal navigable channel and ending off of Coronado Island.

(2) [Reserved]

(b) *Definitions.* As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the regulations in this section.

*Participant* means all persons and vessels registered with the event sponsor as a participants in the parade.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector San Diego or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector San Diego Joint Harbor Operations Center (JHOC) at 619-278-7033. Those in the regulated area, including participants, must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated areas through advanced notice via Broadcast Notice to Mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. through 2:30 p.m. on Thursday, November 11, 2021.

**Dated:** November 4, 2021.

**T. J. Barelli,**

*Captain, U.S. Coast Guard,*

*Captain of the Port San Diego.*

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